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Forty-seventh session
Agenda item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[25 February 1991]

Human rights in armed conflicts

1. Unprecedented media-coverage of suffering caused by the current Gulf crisis has helped inform millions of people as to the gross violations of human rights that accompany large-scale warfare. Yet hardly any military and political leaders have referred to the International Bill of Human Rights, which most people seem not to realize is now in its twenty-fifth anniversary year. Most allegations and disputes regarding the Gulf scene focus instead on humanitarian laws such as the Geneva Conventions of 1949 and the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Cases, and of Bacteriological Methods of Warfare of 17 June 1925.

2. Those documents are, of course, pertinent and powerful. Yet since 1948, the year of birth of the Universal Declaration of Human Rights, countless additional norms applicable to armed conflict have been prescribed; and this Commission has been an eminent participant in the formulation, implementation and enforcement of those norms.

3. At the current session, should not the Commission proclaim the relevance of the "new" norms, ever-encroaching horrors and ghastly threats of the Gulf War that now are being witnessed? A fundamental rule of human rights law is that individuals, and peoples too, should be accorded those protections that are the most beneficial. In no way do reminders of unique United Nations protections downgrade the great contributions of the Geneva treaties. Sometimes, though, the United Nations prescriptions are especially beneficial. Illustrative is article 4 of the Covenant on Civil and Political Rights, which authorizes derogations of human rights in "time of emergency which threatens the life of the nation". But the first section of the article provides that government actions must not "involve discrimination solely on the ground of race, colour, sex, language, religion or social origin"; and section 2 adds, notably, "No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made ..." Those and comparable words indisputably are applicable and restrict all antagonists involved in the Gulf.

4. Representatives of Human Rights Advocates urge that at the current session the Commission specifically and forcefully remind military and political warriors that the basic commands of the International Bill of Human Rights are to be observed by <u>all</u> who profess to respect the rule of law internationally.

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Agenda item 14

HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

Written statement submitted by Disabled People's International, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[12 February 1991]

1. Disabled Peoples' International has been intensely involved with the Working Group of the Commission on Human Rights on the Question of the Draft Body of Principles and Guarantees for the Protection of Mentally Ill Persons and for the Improvement of Mental Health Care (Working Group) in its deliberations over the text of an international instrument to protect mentally ill persons. 1/

2. During last year's session of the Working Group, we made substantial progress toward a final text. However, a number of key issues were left to this year's session, and one controversial provision was adopted last year after the DPI delegate had left Geneva. During the 1990 session, during which DPI was represented, the Working Group finished its work on the draft. The draft, now called Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, 2/ is now before the whole of the Commission on Human Rights at its forty-seventh session.

PROBLEM AREA - INVOLUNTARY ADMISSION

3. There is one major area where the draft is less than satisfactory from a DPI perspective: the involuntary admission process, approved by the Working Group, the last day of the 1990 Working Group, when the DPI delegate, because of severe shortage of funds, had had to return home. This process (principles 16 and 17 of the draft) allows involuntary admission upon the

authority of a "qualified mental health practitioner" in two circumstances: (1) where there is imminent harm to the patient or to others, or (2) there is a likelihood of serious deterioration in the patient's condition (principle 16). When there has been an involuntary admission, the decision must be brought before a review body "as soon as possible" after admission.

4. The DPI position was (1) to require that the initial involuntary admission (commitment) to a mental health facility require either approval of two mental health practitioners or an independent judicial procedure (i.e. the person comes before a magistrate); (2) to require that any involuntary admission be brought before the review body within 72 hours; and (3) to delete the "serious deterioration" standard entirely.

5. The reasons for this position are quite clear:

(a) Involuntary admission subjects a patient to treatment without consent (see principle 11). Therefore, more assurances of impartiality are needed for initial involuntary admission than the recommendation of one mental health practitioner. As we have seen in too many countries, parents use "family" doctors to have their "problem children" (the "children" are in fact adults) committed;

(b) Almost all drugs given patients involuntarily are not drugs that cure mental illness; usually, they are drugs that pacify patients so as to ease staff burdens in the institutions. Accordingly, no one is going to be medically harmed because of a delay in the ability to give drugs that might be caused by requiring a judicial or magisterial procedure;

(c) Most drugs administered, especially the phenothiazines, have irreversible side effects. If they are not medically needed, they cause a secondary disability, sometimes called drug-induced personality. There should be full review before these drugs are involuntarily administered.

(d) The ability to commit persons based on a "deterioration" standard causes jurisdictions with short funds to bypass community care, where on an out-patient basis a patient is likely to agree to medically sound treatments. This is what has happened, for example, in the United States. There, mental patients all too often have no community care at all. These persons become homeless street people. When they get bad enough ("deteriorate"), the jurisdiction sends them away for a week or so (using special federally-mandated funds that only covers hospitalization) and when they are severely pacified with drugs, they dump them back onto the street. When the medication wears off, the cycle repeats. DPI considers this cruel, inhuman and degrading treatment, and a violation of the right to medical care. For jurisdictions that do not abuse patients in this fashion, limiting the involuntary admission standard to a danger to self and others is no burden;

(e) Prompt appearance before the review board is essential to add protection against abuse in drugging and in commitment. Because the patient is entitled to the right to counsel at the review body stage (principle 18), there is the assurance that the patient will have an independent advocate. DPI maintains that "as soon as possible" would be construed to mean weeks if not months in some jurisdictions, clearly far too long. DPI maintains that persons deprived of liberty rights because of alleged mental illness ought to have the same protection as is available to persons detained for alleged criminal acts;

(f) Involuntary admission should truly be a last resort, when all other meaningful medical treatments and less restrictive settings have clearly failed. The burden should clearly be on the jurisdiction to prove that the treatment is life or death, that all other treatments have been tried, and that the institution and the proposed treatments are truly beneficial. After all, the person risks his liberty rights, one of the most important human rights. And as DPI has maintained, people do have a right to be different. Some societies have very narrow ranges of acceptable behaviour. Those who do not meet the test are labelled disabled and put away;

(g) Even the best of countries abuse the involuntarily admitted patient. DPI does not believe Governments should be left with mere monitoring to see that there is no abuse. The patients themselves and their advocates must be given every opportunity to defend themselves against abuse.

PROBLEM AREA - COMMUNITY CARE

6. A second, though smaller, problem area involves the mandate for community care, normalization and deinstitutionalization (principles 7, 8 and 9). DPI urges that the community care mandate be strengthened - especially in light of potential abuse in the involuntary admissions area.

RECOMMENDATIONS

7. DPI proposes the following changes in the text of the principles:

(a) Principle 16: substitute "independent authority" for "qualified mental health practitioner". Delete criteria 1 (ii): involuntary admission based on a "serious deterioration" standard;

(b) Principle 17: substitute "within 72 hours" for "as soon as possible" in section 2;

(c) This is a critical issue for DPI and all persons with mental illness. We anticipate that the principles, with our recommendations, will provide substantial improvement in the enjoyment of human rights of persons with mental illness. The instrument will also be a fitting one to promulgate in the closing year of the Decade of Disabled Persons.

Notes

1/ See our Report to DPI regarding last year's session of the Working Group, as well as our 1988 report to the Sub-Commission, our written statements published as E/CN.4/Sub.2/1988/NGO/27 and E/CN.4/1989/NGO/75, and various other memos.

2/ The Working Group chose to call the segments of this instrument "principles" rather than "articles". Most human rights instruments have "articles". However, some instruments use "principles" and are considered of equal weight to United Nations declarations or instruments using "articles".

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THE ROLE OF YOUTH IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS, INCLUDING THE QUESTION OF CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

Written statement submitted by Friends World Committee for Consultation, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[4 March 1991]

Friends World Committee for Consultation welcomes the report of the Secretary-General entitled "Conscientious objection to military service" contained in document E/CN.4/1991/64.

Friends World Committee for Consultation asks the Commission to:

1. Recognize that conscientious objection to military service derives from reasons of conscience or profound conviction arising from religious, ethical, moral or humanitarian, philosophical or similar motives;

2. Recognize the right of an individual to be released from the armed forces on grounds of conscience or profound conviction;

3. Request States to disseminate information about the right to conscientious objection to military service, particularly through youth organizations, and the Secretary-General should include the right to conscientious objection to military service in the United Nations public information activities, including the World Campaign for Human Rights;

4. Emphasize that alternative service should promote justice, peace, sustainable development and international understanding. Alternative service must never be punitive or used as a means of punishment;

5. Request the Secretary-General to update the information provided in the annexes of the Sub-Commission's report by Messrs. Eide and Mubango-Chipoya entitled "Conscientious objection to military service" (E/CN.4/Sub.2/1983/30/Rev.1).

6. Quakers have, for more than 300 years, refused to participate in war, believing that it is wrong to kill or to train people to kill. This is a conviction held by many people of different religious faiths and beliefs. It is on these grounds that Quakers claim the right to conscientious objection to military service, not only for themselves but for all who share their pacifist beliefs.

7. Friends World Committee for Consultation which represents Quakers from around the world, welcomes resolution 1989/59 of the United Nations Commission on Human Rights which "Recognizes the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion ...".

8. In recent years there have been important advances in the recognition by many Member States of the United Nations of the right to conscientious objection, and the list of countries having or considering legislation continues to grow. However, not all States respect the right to conscientious objection to military service and hundreds of people are imprisoned or otherwise punished because of their principled objection to the taking of human life. More alarming are the frequent reports of forced conscription through kidnapping and street round-ups. Some of those forcibly recruited are young children under the age of conscription.

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THE ROLE OF YOUTH IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS, INCLUDING THE QUESTION OF CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

Written statement submitted by Pax Christi International, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[4 March 1991]

Pax Christi International welcomes the Secretary-General's report "Conscientious Objection to Military Service". We ask the Commission to:

1. Recognize that conscientious objection to military service derives from reasons of conscience or profound conviction arising from religious, ethical, moral or humanitarian, philosophical or similar motives.

2. Recognize the right of persons already in the armed services to be released on grounds of conscience or profound conviction. Requests for such release are occurring more frequently in countries where obligatory military service has been replaced by a volunteer enlistment programme. The enlisting volunteer may be asked to indicate in writing or otherwise that he or she is not a conscientious objector. However, despite this, young people may find that during military training the probability of their taking human life is so repugnant that they become conscientious objectors. This change of mind and heart should be respected and these young people should be released from the armed forces.

3. Request the Secretary-General to include the right of conscientious objection in the publications and activities of the World Campaign for Human Rights and in other United Nations public information activities.

4. Emphasize that an alternative service should promote justice, peace, economic conversion, sustainable development, environmental preservation and restoration. Such a service should also promote international co-operation and understanding. It must never by punitive or used as a means of punishment.

5. Request the Secretary-General to update and expand the information provided in the annexes of the Sub-Commission's report by Messrs. Eide and Mubango-Chipoya entitled "Conscientious Objection to Military Service" (E/CN.4/Sub.2/1983/30/Rev.1) where the availability of new information on the issue of conscientious objectors requesting release from volunteer armies should be noted in particular.